



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 10
1200 Sixth Avenue
Seattle, Washington 98101

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QTXCF

Reply To
Attn Of: ECL-115

Georgia Baxter
President & CEO
J H Baxter & Co.
1700 So. El Camino Real
P.O. Box 5902

Re: J.H. Baxter - Quendall Terminals

USEPA SF



1269001

Dear Ms. Baxter:

This letter responds to your letter dated April 19, 2006 requesting that EPA consider entering into an ability to pay settlement with J.H. Baxter for the Quendall Terminals. As we mentioned in our meeting, we are perplexed by your request for an ability to pay settlement at this time. Some of our initial concerns and questions which we will be discussing with you next week are set forth in this letter. Please come to our meeting next week prepared to discuss these matters. The meeting is scheduled for Wednesday, May 24 at 2:00 at EPA's offices.

First, your request seems premature since the scope of work currently being discussed is for a focused remedial investigation and feasibility study. At this investigation stage in the process, EPA does not typically enter into settlements with the primary potentially responsible parties.

Second, the timing of your request is further complicated by the business and fiscal relationships that exist between J.H. Baxter and the other potentially responsible parties. Further information is needed regarding these contractual relationships.

Third, your request does not provide a proposal for EPA to evaluate in the context of your ability to pay claim. In order for EPA to evaluate your request for an ability to pay settlement, you must provide a specific proposal regarding the work you are proposing to perform and/or the payments you are proposing to make.

Fourth, your request does not include sufficient information to support an inability to pay claim. For instance, you do not provide a tax return nor a financial statement for 2005 nor the first quarter of 2006. Specific information needed to support an

inability to pay claim is provided in the attached document.

Although EPA is willing to further discuss these matters, our preference is for J.H. Baxter to work with the other responsible parties to commit to performance of the remedial investigation and feasibility study pursuant to a consensual settlement agreement.

Please feel free to telephone me at (206) 553-1987, or Cyndy Mackey, Assistant Regional Counsel, at (206) 553-2569, if you have any questions or would like to discuss these matters further.

Sincerely,

Lynda Priddy
Remedial Project Manager

cc: Cyndy Mackey

1. Please provide the following for the 'review period' of January 1, 2001 through May 15, 2005, unless previously provided or otherwise indicated below:

- a. **Narrative Statement**: A substantive statement with supporting information which explains the specific reason(s) why the partnership is claiming an inability to pay for the remedial investigation and feasibility study.

- b. **Federal Tax Returns** True, complete and signed copies of the federal tax return for 2005.

- c. **Annual Financial Statements** True and complete copies to include but not limited to an Income Statement, Balance Sheet, Cash Flow Statement and Expense Statements for 2005.

In the first instance, annual Financial Statements should be those completed by an outside CPA. In order of preference, this would be an audit, a review, or a compilation - and includes any attached notes. If an outside CPA does not prepare these statements, then partnership generated annual financial statements should be provided. In the event that final financial statements are not yet ready for a just completed fiscal year, then provide a draft copy.

- d. **Year To Date Financial Statement**

- (1) Please provide Year-To-Date financial statements through April 30, 2006; at a minimum, provide the Income Statement, Balance Sheet and Cash Flow Statement. If no tax return has been completed for the most recent tax year (2005), financial statements for that year should also be included.

- (2) Indicate if there have been any substantive changes to any notes contained in the most recent annual financial statements compared to the prior year.

- e. **Partnership Management/Remuneration**

- (1) For the years 2001 through 2005, and for the period ending May 15, 2006, provide the names of all partnership officers and each officer's total annual remuneration for each of the periods noted.

- (2) Indicate if any loans have been made between a partner and the partnership (or vice-versa), and the terms, conditions and current status of each loan.

- f. **Partners** Provide the names of those partners, limited and general, who hold the first eighty percent (80%) of the partnership's voting shares. For each partner named, indicate the type and percentage of partnership shares held and the respective dollar value.

g. **Litigation** Provide a statement, with relevant details, as to whether the partnership currently is, or anticipates being a party to any litigation which has not been noted in the most recent financial statement and which could impact its financial situation.

h. **Financial Settlements** Provide a statement with relevant details as to whether the partnership currently is, or anticipates receiving or paying a financial settlement which has not been noted in the most recent financial statements.

i. **Partnership Control and Affiliations**

(1) For the period between 2001 and present indicate whether the partnership controlled or controls or was or is controlled by, or affiliated with any other entity (e.g., partnership, company, etc.), domestic or foreign, during the period January 1, 2001 through May 15, 2006. For each entity named, provide:

- a. the names of senior officers and board of directors
- b. type of control or affiliation
(i.e. provides administrative/financial/marketing services), and
- c. describe the percentage of ownership and means of control.

(2) For the same review period indicate whether the partnership had or has any business with any other entity where a partner had or has a financial interest or control of that other entity. For each entity named, provide:

- a. the name of the entity
- b. type of business conducted
- c. the partner's name
- d. percentage ownership of that entity by the partner
- e. whether this partner controls the entity
- f. The relevant dates for this information

j. **Credit**

(1) Provide a statement as to whether the partnership has any lines of credit that have not been mentioned in the most recent financial statement. If the answer is 'Yes', indicate with which financial institution(s) or lender(s), and the specific terms and conditions of that line of credit and current financial status.

(2) Provide a statement indicating whether the partnership has applied for and been denied credit during the review period. If the answer is 'Yes', provide a statement containing details of that credit request and denial (i.e., date applied for, amount, financial institution/lender, date denied, etc.). Include a copy of the letter of denial from that financial institution/lender.

k. **Insurance** Did the partnership have any liability insurance in effect which would provide coverage for this specific environmental issue. If 'Yes', provide a true and complete copy of each policy.

Provide information regarding the status of any efforts to receive any payment or benefit from insurance companies for any claims arising at the Quendall property. This includes, but is not limited to, information regarding any understanding or agreement with the insurance carriers about duty to defend or coverage for liability, amount collected from any insurer, dates, recipients, and a detailed description of the use of any insurance proceeds received and the reasons for those expenditures. Also state the remaining aggregate limit for all insurance policies carried for all years in which insurance policies exist.

l. **Market Conditions** If the partnership claims that market conditions are a factor in its inability to pay claim, provide substantive supporting information to substantiate any such claim(s).

m. **Partnership Agreement** Provide a true and complete copy of the partnership agreement(s).

2. For each partner who claims the partnership's tax liability on his/her respective Federal tax returns, please provide the following:

a. **Federal Tax Returns** True, complete and signed copies of the Federal tax returns for the years 2001 - 2005.

3. **Additional Information** The EPA encourages the partnership and each partner to provide any additional information which substantiates its inability to pay claim.

EPA may also request additional information about the partnership and each partner.